IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No.56 of 1990
Date of decision: 13.10.2006

The Commissioner of Income-tax, Amritsar

..Applicant
through
Dr. N.L.Sharda, Advocate

v.

M/s Surinder Sugar Store, Amritsar.

..**Respondent**
through
Mr. Suvir Sehgal, Advocate

CORAM:

Hon'ble Mr.Justice Adarsh Kumar Goel
Hon'ble Mr.Justice Rajesh Bindal

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

At the instance of the Revenue, the Income-tax Appellate Tribunal, Amritsar Bench (for short, `the Tribunal') has referred, under Section 256(1) of the Income-tax Act, 1961 (for short, `the Act'), the following question for the opinion of this Court arising out of ITA No. 1371 (ASR)/1979, pertaining to the assessment year 1975-76:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition of Rs. 1,04,774/- made by the Income-tax Officer under Section 40A(3) of the Income-tax Act, 1961 and sustained by the Commissioner of Income-tax (Appeals)?"

Briefly, the facts are that a search and seizure operation was carried out at the premises of the assessee on 24.8.1977, where several documents were recovered. During the course of assessment, besides other things, expenses to the tune of Rs. 1,04,774/- were disallowed under Section 40A(3) of the Act because these involved payment exceeding Rs. 2500/-. The Assessing Officer assessed the

income of the assessee by applying gross profit rate on the turnover disclosed by the assessee as well as the turnover which was considered to be undisclosed by the assessee. Certain additions were made on account of payment exceeding Rs.2500/- in cash under Section 40A(3) of the Act. In appeal before the Commissioner of Income-tax (Appeals), the assessee failed on this account. However, the Tribunal accepted the plea of the assessee and ordered deletion of the additions.

We need not dilate much on the issue as in identical circumstances, we have dismissed I.T.A. No. 512 of 2005 – Commissioner of Income-tax (Central), Ludhiana v. Smt.Santosh Jain, decided on 10.8.2006, wherein following the judgment of Allahabad High Court in Commissioner of Income-Tax v. Banwari Lal Banshidhar, (1998) 229 ITR 229, a view was taken that where gross profit rate is applied, there is no justification for making disallowance under Section 40A(3) of the Act. Keeping that in view, the question referred in the present reference is answered against the Revenue and in favour of the assessee.

The reference is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

(Adarsh Kumar Goel)
Judge

13.10.2006
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